

**ASSEMBLY BILL**

**No. 2292**

**Introduced by Assembly Member Montanez**

February 22, 2006

---

An act to amend Sections 4702 and 4706.5 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2292, as introduced, Montanez. Workers' compensation: death benefits.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law prescribes statutory death benefits required to be paid to the dependents, or, if there are no dependents, to the personal representative of the deceased employee, heirs, or other persons entitled to a deceased employee's accrued and unpaid compensation under specified workers' compensation laws.

This bill would specify that those death benefits shall be paid to a surviving dependent, personal representative, heir, or other person entitled to compensation under specified workers compensation laws, notwithstanding any amount of the deceased employee's accrued and unpaid compensation that is paid or owing to a surviving dependent, personal representative, heir, or other person entitled to a deceased employee's accrued and unpaid compensation.

Existing law requires an employer, whenever any fatal injury is suffered by an employee under circumstances that would entitle the employee to compensation benefits, but for his or her death, and the employee does not leave surviving any person entitled to a dependency death benefit, to pay a sum to the Department of

Industrial Relations equal to the total dependency death benefit that would be payable to a surviving spouse with no dependent minor children.

This bill would specify that the department may only take action to collect any amounts it alleges are due if it has conducted a reasonable search to determine whether a deceased employee has any surviving dependents, personal representatives, heirs, or other persons entitled to the deceased employee's accrued and unpaid compensation under specified workers' compensation laws, and would prohibit the department from collecting those death benefits if any of those persons are determined to exist.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. It is the intent of the Legislature to clarify  
2     existing statutory requirements governing the payment of death  
3     benefits to the survivors of deceased employees under the  
4     workers' compensation system when the employee suffered a  
5     fatal injury.

6     SEC. 2. Section 4702 of the Labor Code is amended to read:

7     4702. (a) Except as otherwise provided in this section and  
8     Sections 4553, 4554, 4557, and 4558, *and notwithstanding any*  
9     *amount of compensation paid or otherwise owing to the surviving*  
10    *dependent, personal representative, heir, or other person entitled*  
11    *to a deceased employee's accrued and unpaid compensation*, the  
12    death benefit in cases of total dependency shall be as follows:

13    (1) In the case of two total dependents and regardless of the  
14    number of partial dependents, for injuries occurring before  
15    January 1, 1991, ninety-five thousand dollars (\$95,000), for  
16    injuries occurring on or after January 1, 1991, one hundred  
17    fifteen thousand dollars (\$115,000), for injuries occurring on or  
18    after July 1, 1994, one hundred thirty-five thousand dollars  
19    (\$135,000), for injuries occurring on or after July 1, 1996, one  
20    hundred forty-five thousand dollars (\$145,000), and for injuries  
21    occurring on or after January 1, 2006, two hundred ninety  
22    thousand dollars (\$290,000).

23    (2) In the case of one total dependent and one or more partial  
24    dependents, for injuries occurring before January 1, 1991,

1 seventy thousand dollars (\$70,000), for injuries occurring on or  
2 after January 1, 1991, ninety-five thousand dollars (\$95,000), for  
3 injuries occurring on or after July 1, 1994, one hundred fifteen  
4 thousand dollars (\$115,000), for injuries occurring on or after  
5 July 1, 1996, one hundred twenty-five thousand dollars  
6 (\$125,000), and for injuries occurring on or after January 1,  
7 2006, two hundred fifty thousand dollars (\$250,000), plus four  
8 times the amount annually devoted to the support of the partial  
9 dependents, but not more than the following: for injuries  
10 occurring before January 1, 1991, a total of ninety-five thousand  
11 dollars (\$95,000), for injuries occurring on or after January 1,  
12 1991, one hundred fifteen thousand dollars (\$115,000), for  
13 injuries occurring on or after July 1, 1994, one hundred  
14 twenty-five thousand dollars (\$125,000), for injuries occurring  
15 on or after July 1, 1996, one hundred forty-five thousand dollars  
16 (\$145,000), and for injuries occurring on or after January 1,  
17 2006, two hundred ninety thousand dollars (\$290,000).

18 (3) In the case of one total dependent and no partial  
19 dependents, for injuries occurring before January 1, 1991,  
20 seventy thousand dollars (\$70,000), for injuries occurring on or  
21 after January 1, 1991, ninety-five thousand dollars (\$95,000), for  
22 injuries occurring on or after July 1, 1994, one hundred fifteen  
23 thousand dollars (\$115,000), for injuries occurring on or after  
24 July 1, 1996, one hundred twenty-five thousand dollars  
25 (\$125,000), and for injuries occurring on or after January 1,  
26 2006, two hundred fifty thousand dollars (\$250,000).

27 (4) (A) In the case of no total dependents and one or more  
28 partial dependents, for injuries occurring before January 1, 1991,  
29 four times the amount annually devoted to the support of the  
30 partial dependents, but not more than seventy thousand dollars  
31 (\$70,000), for injuries occurring on or after January 1, 1991, a  
32 total of ninety-five thousand dollars (\$95,000), for injuries  
33 occurring on or after July 1, 1994, one hundred fifteen thousand  
34 dollars (\$115,000), and for injuries occurring on or after July 1,  
35 1996, but before January 1, 2006, one hundred twenty-five  
36 thousand dollars (\$125,000).

37 (B) In the case of no total dependents and one or more partial  
38 dependents, eight times the amount annually devoted to the  
39 support of the partial dependents, for injuries occurring on or

1 after January 1, 2006, but not more than two hundred fifty  
2 thousand dollars (\$250,000).

3 (5) In the case of three or more total dependents and regardless  
4 of the number of partial dependents, one hundred fifty thousand  
5 dollars (\$150,000), for injuries occurring on or after July 1, 1994,  
6 one hundred sixty thousand dollars (\$160,000), for injuries  
7 occurring on or after July 1, 1996, and three hundred twenty  
8 thousand dollars (\$320,000), for injuries occurring on or after  
9 January 1, 2006.

10 (6) (A) In the case of a police officer who has no total  
11 dependents and no partial dependents, for injuries occurring on  
12 or after January 1, 2003, and prior to January 1, 2004, two  
13 hundred fifty thousand dollars (\$250,000) to the estate of the  
14 deceased police officer.

15 (B) For injuries occurring on or after January 1, 2004, in the  
16 case of no total dependents and no partial dependents, two  
17 hundred fifty thousand dollars (\$250,000) to the estate of the  
18 deceased employee.

19 (b) A death benefit in all cases shall be paid in installments in  
20 the same manner and amounts as temporary total disability  
21 indemnity would have to be made to the employee, unless the  
22 appeals board otherwise orders. However, no payment shall be  
23 made at a weekly rate of less than two hundred twenty-four  
24 dollars (\$224).

25 (c) Disability indemnity shall not be deducted from the death  
26 benefit and shall be paid in addition to the death benefit when the  
27 injury resulting in death occurs after September 30, 1949.

28 (d) All rights under this section existing prior to January 1,  
29 1990, shall be continued in force.

30 SEC. 3. Section 4706.5 of the Labor Code is amended to  
31 read:

32 4706.5. (a) Whenever any fatal injury is suffered by an  
33 employee under circumstances that would entitle the employee to  
34 compensation benefits, but for his or her death, and the employee  
35 does not leave surviving any person entitled to a dependency  
36 death benefit, the employer shall pay a sum to the Department of  
37 Industrial Relations equal to the total dependency death benefit  
38 that would be payable to a surviving spouse with no dependent  
39 minor children.

1 (b) When the deceased employee leaves no surviving  
2 dependent, personal representative, heir, or other person entitled  
3 to the accrued and unpaid compensation referred to in Section  
4 4700, the accrued and unpaid compensation shall be paid by the  
5 employer to the Department of Industrial Relations.

6 (c) The payments to be made to the Department of Industrial  
7 Relations, as required by subdivisions (a) and (b), shall be  
8 deposited in the General Fund and shall be credited, as a  
9 reimbursement, to any appropriation to the Department of  
10 Industrial Relations for payment of the additional compensation  
11 for subsequent injury provided in Article 5 (commencing with  
12 Section 4751), in the fiscal year in which the Controller's receipt  
13 is issued.

14 (d) The payments to be made to the Department of Industrial  
15 Relations, as required by subdivision (a), shall be paid to the  
16 department in a lump sum in the manner provided in subdivision  
17 (b) of Section 5101.

18 (e) The Department of Industrial Relations shall keep a record  
19 of all payments due the state under this section, and shall take  
20 any steps as may be necessary to collect those amounts. *The*  
21 *department may only take action to collect any amounts it alleges*  
22 *are due if it has conducted a reasonable search to determine*  
23 *whether a deceased employee has any surviving dependents,*  
24 *personal representatives, heirs, or other persons entitled to the*  
25 *deceased employee's accrued and unpaid compensation under*  
26 *those provisions, and shall not collect those amounts if such a*  
27 *dependent, personal representative, heir, or other person entitled*  
28 *to the deceased employees accrued and unpaid compensation is*  
29 *determined to exist.*

30 (f) Each employer, or the employer's insurance carrier, shall  
31 notify the administrative director, in any form as the  
32 administrative director may prescribe, of each employee death,  
33 except when the employer has actual knowledge or notice that  
34 the deceased employee left a surviving dependent.

35 (g) When, after a reasonable search, the employer concludes  
36 that the deceased employee left no one surviving who is entitled  
37 to a dependency death benefit, and concludes that the death was  
38 under circumstances that would entitle the employee to  
39 compensation benefits, the employer may voluntarily make the  
40 payment referred to in subdivision (a). Payments so made shall

1 be construed as payments made pursuant to an appeals board  
2 findings and award. Thereafter, if the appeals board finds that the  
3 deceased employee did in fact leave a person surviving who is  
4 entitled to a dependency death benefit, upon that finding, all  
5 payments referred to in subdivision (a) that have been made shall  
6 be forthwith returned to the employer, or if insured, to the  
7 employer's workers' compensation carrier that indemnified the  
8 employer for the loss.

O